



Department of
**Environment &
Conservation**

Public Chapter 300

Public Comment at Open Meetings

Board Attorney Role

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Applicability

Public Chapter 300 applies to “meetings” of “governing bodies.”

- “Governing body” means: (A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.... T.C.A. 8-44-102(b)(1).
- “Meeting” means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. “Meeting” does not include any on-site inspection of any project or program. T.C.A. 8-44-102(b)(2).

Applicability

- P.C. 300 does not apply to TDEC public hearings.
 - TDEC is not a “governing body.”
 - Examples: permit hearings, rulemaking hearings (i.e., where the board is not present)
- P.C. 300 does apply to meetings of boards and commissions.

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SECTION 1. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following as a new section:

(a) A governing body shall, for each public meeting, reserve a period for public comment to provide the public with the opportunity to comment on matters that are germane to the items on the agenda for the meeting.

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(b) The governing body may put reasonable restrictions on the period for public comment, such as the length of the period, the number of speakers, and the length of time that each speaker will be allowed to provide comment. The governing body may require a person to give notice in advance of the desire to offer comments at a meeting. The governing body shall take all practicable steps to ensure that opposing viewpoints are represented fairly, if any.

(c) A notice for a public meeting shall indicate the manner in which a person may indicate the person's desire to provide public comment at the meeting.

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(d) This section does not apply to:

(1) A meeting of a governing body, or a portion thereof, where the governing body is conducting a disciplinary hearing for a member of the governing body or a person whose profession or activities fall within the jurisdiction of the governing body; or

(2) A meeting for which there are no actionable items on the agenda.

SECTION 2. This act takes effect July 1, 2023, the public welfare requiring it.

SCOPE

- Comment period is for agenda items.
- Does not apply to disciplinary hearings.
- Does not apply to meetings at which there are no actionable items:
 - “Actionable items” is not defined, but generally includes items that require a vote of the governing body.
 - Presentations, information updates, etc. are not “actionable.”
 - Likely does not apply to administrative items (voting to adopt the minutes of the last meeting, voting to adjourn, etc.).
 - We are waiting for additional clarification.

Limits on Public Comments

- Although the statute allows governing bodies to place limits on public comments, we have been instructed that doing so requires a rule.
- We anticipate receiving direction later this summer concerning rulemaking recommendations.

Next Steps

- Starting July 1, all boards and commissions must provide a public comment period for actionable items on their agendas.
- Both the agenda itself and the notice of the meeting on the website should indicate how to comment.
- Until rules are in effect (and that will take a fair amount of time), boards cannot limit public comment on agenda items.
- Boards may set one time period for comment, or provide a separate comment opportunity for each actionable agenda item.
- The comment period should be in advance of a vote.

Reminders – T.C.A. 8-44-108

- TDEC is conducting board and commission meetings in a hybrid format – both in-person and via videoconference.
- For meetings that allow participation by members by electronic means:
 - Members of the public participating remotely must be able to view and listen to the meeting in real time, and must be able to provide public comment;
 - All votes must be by roll call;
 - Documents must be provided to members not physically present before the meeting;
 - The meeting must be recorded, and a recording of the meeting (or a link to the recording) must be posted on the website ASAP but not later than 3 business days after the meeting.
- If a quorum is not physically present, you will need a determination of necessity. Work with your board attorney to assist you.

Questions?